

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

FRANK JAMES CARTER,)	
)	
Petitioner,)	
vs.)	CIVIL ACTION 2:15-0234-KD-M
CARTER DAVENPORT,)	
)	
Respondent.)	

ORDER

This action is before the Court on the Report and Recommendation of the Magistrate Judge (doc. 17) and the objection filed by Petitioner Frank James Carter (doc. 19).¹

The Petitioner's primary contention, as reiterated in his objection, is that he was convicted in Dallas County for an attempted murder that occurred in Lowndes County. The petitioner contends that this conviction in the wrong venue violates the Sixth Amendment to the U.S. Constitution which provides in part that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...." U.S. Const. amend. VI. However, not only has this federal claim not been exhausted in state court, it is also without any merit. In *Martin v. Beto*, 397 F.2d 741 (5th Cir.1968),² the Court recognized that the Sixth Amendment right to a trial in the district where the defendant committed the crime does not apply to state prosecutions. *See also, French*

¹ Petitioner's motion for extension of time to file his objection (doc. 18) is moot.

² Decisions of the former Fifth Circuit rendered prior to the close of business on September 30, 1981, are binding precedent on the Eleventh Circuit. *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc).

v. Carter, 828 F.Supp.2d 1309, 1330 (S.D. Ga. 2012) ("And venue, for that matter, is not a federal constitutional claim.") Thus, there is no cognizable federal constitutional claim based on the venue provision of the Sixth Amendment.

Accordingly, after due and proper consideration of the issues raised, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is adopted as the opinion of this Court.

Accordingly, it is ORDERED that this petition for writ of habeas corpus be **DENIED** and that this action be **DISMISSED**. It is further **ORDERED** that any certificate of appealability filed by Petitioner be **DENIED** as he is not entitled to appeal *in forma pauperis*.

DONE this 8th day of January 2016.

s/Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE
